IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH, AT JAIPUR

S. B. CRIMINAL MISC. PETITION NO. 771/1997

RAMESHWAR PRASAD
v
KALU RAM & OTHERS.

Date of Judgment: **JULY 13, 2007**

Hon'ble Mr. Justice R. S. Chauhan

Mrs. Alka Bhatnagar for the petitioner.
Mr. B.K. Sharma, Public Prosecutor.
Mr. M.M. Ranjan for the non-petitioners.

By Court:

The petitioner has challenged the order dated 28th October, 1997 passed by the S.D.M. Dausa whereby he had reviewed his earlier order dated 25th October, 1997.

The brief facts of the case are that the petitioner was a tenant in two shops owned by Mr. Rameshwar. The landlord, Mr. Rameshwar filed a civil suit against the petitioner for eviction but ultimately the same was compromised and decided vide order dated February 1, 1997. Subsequently Mr. Rameshwar expired and his son, Kalu Ram, non-petitioner No. 1, became the owner of these two shops. Since Mr. Kalu Ram

was interested in getting these shops vacated, and since he was not agreeable to the compromise entered between the petitioner and his father, he sold his shops to Mr. Kajod Mal, the non-petitioner No.2 , on 18th September, 1997. According to the petitioner, on 10th October, 1997, Kalu Ram alongwith one Babu Lal Meena and 10-15 other persons entered the shop of the petitioner and threw the articles out of the shop. The petitioner lodged a report at the Police Station, Kotwali, Dausa. On the basis of the said report a formal FIR, FIR No. 545/97, was registered for offence under Section 147, 453, 442 and 379 IPC. On the other hand, Mr. Kajod Mal, the new owner of the shop, submitted an application through the S.H.O., Police Station, Kotwali before the S.D.M. under Section 145 of Cr.P.C. The petitioner appeared before the S.D.M. on 22nd of October, 1997 and placed his case before the learned S.D.M. After perusing the documents submitted by both the sides and after hearing both the sides, the learned S.D.M., concluded that the petitioner was in possession of the disputed shop and directed the S.H.O., Police Station, Kotwali to handover the possession of the disputed shop to the petitioner. The said

directions were passed by the learned S.D.M., vide order dated 25th of October, 1997. The case was posted for 5th November, 1997. However, without giving any prior notice to the petitioner on 20th of October, 1997, the learned S.D.M., reviewed his order dated 25th of October, 1997 and appointed the S.H.O., Police Station, Kotwali as receiver. Hence, this petition before this court.

Mrs. Alka Bhatnagar, the learned counsel for the petitioner, has argued that once an order is passed under Criminal Procedure Code, it cannot be reviewed in light of Section 362 of the Code. Moreover, the impugned order has been passed in the back of the petitioner. Therefore, the principles of Natural Justice have been violated. Lastly, that the parties are peacefully co-existing. Therefore, the continuation of the receiver is no longer required.

On the other hand, Mr. M.M. Ranjan, learned counsel for non-petitioner No.2, has argued that in case receiver is not continued the likelihood of the dispute errupting even today cannot be ruled out.

We have heard both the learned counsels and have perused the report which has been placed before us.

Undoubtedly, the power of review is not contained in the Criminal Procedure Code. Therefore, the learned S.D.M. could not have reviewed the order dated 25th October, 1997. Moreover an opportunity of hearing should have been granted before passing any order. Considering the fact that both the parties are living peacefully, we see no reason for continuing the receiver after a lapse of a decade.

In the result, this petition is allowed and the impugned order dated 25th October, 1997 is quashed and set aside.

(R.S. CHAUHAN) J.

MRG.